



Before the Appellate Board
National Electric Power Regulatory Authority
(NEPRA)
Islamic Republic of Pakistan

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No. NEPRA/AB/Appeal-104/POI-2016/ 828-832

June 01, 2017

1. M/s Arceha (Pvt.) Ltd,
Through its Director/Business Partner,
Muhammad Yousaf,
Faisalabad Road, Chiniot
2. Chief Executive Officer
FESCO Ltd,
West Canal Road, Abdullahpur,
Faisalabad
3. Mehar Shahid Mehmood,
Advocate High Court,
Office No. 25, 3rd Floor,
Ali Plaza, 3-Mozang Road,
Lahore
4. Sub Divisional Officer (Operation),
FESCO Ltd,
Chiniot-I Sub Division,
Chiniot
5. Electric Inspector
Energy Department,
Govt. of Punjab,
Opposite Commissioner Office,
D.C.G Road, Civil Lines,
Faisalabad Region, Faisalabad

Subject: Appeal Titled FESCO Vs. M/s Arceha (Pvt.) Ltd Against the Decision Dated 20.04.2016 of the Electric Inspector/POI to Government of the Punjab Faisalabad Region, Faisalabad

Please find enclosed herewith the Decision of the Appellate Board dated 30.05.2017, regarding the subject matter, for information and necessary action accordingly.

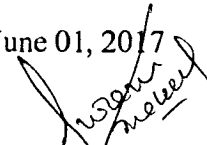
Encl: As Above

(Ikram Shakeel)

No. NEPRA/AB/Appeal-104/POI-2016/ 833

June 01, 2017

Forwarded for information please.


Assistant Director
Appellate Board

✓ Registrar

CC:

1. Member (CA)



National Electric Power Regulatory Authority

Before Appellate Board

In the matter of

Appeal No. NEPRA/Appeal-104/POI-2016

Faisalabad Electric Supply Company LimitedAppellant

Versus

M/s Areeha (Pvt.) Ltd, Faisalabad Road, ChiniotRespondent

For the appellant:

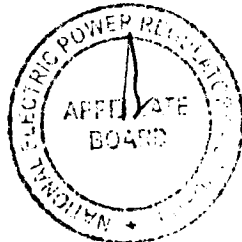
Mehar Shahid Mahmood advocate
Mr. Waqar Ahmed SDO

For the respondent:

Nemo

DECISION

1. This decision shall dispose of an appeal filed by Faisalabad Electric Supply Company Limited (hereinafter referred to as FESCO) against the decision dated 20.04.2016 of Provincial Office of Inspection, Faisalabad region, Faisalabad (hereinafter referred to as POI) under Section 38 (3) of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (hereinafter referred to as the NEPRA Act 1997).
2. Brief facts of the case are that the respondent is an industrial consumer of FESCO bearing Ref No. 24-13161-5100600 R with sanctioned load of 493k W under B-2b tariff. Billing meter of the respondent was checked by Metering & Testing (M&T)

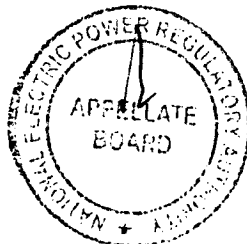




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FESCO on 23.07.2011 and 24.11.2011 and on both the occasions, difference between the needle and display readings was reported. A check meter was installed in series with billing meter of the respondent by FESCO on 24.11.2011. Subsequently audit of the respondent was conducted on 07.03.2012, which pointed out vide Audit Notes 12 & 47 dated 07.03.2012 and 09.1.2013 regarding less charging of units and difference of needle and display readings respectively. Consequently notices dated 06.11.2011 and 09.03.2013 were issued to the respondent and a detection bill (first detection bill) of Rs.340,789/- (Rs.234,907/- on account of less charged units + Rs.89,075/- due to difference of needle and display readings) for the period 24.11.2011 to January 2012 was charged to the respondent in November 2012 as per recommendations contained in the audit notes.

3. Being aggrieved, the respondent initially filed a civil suit before Civil Court Faisalabad on 27.11.2012 and challenged the first detection bill of Rs.340,789/- (Rs.234,907/- on account of less charged units + Rs.89,075/- due to difference of needle and display readings) for the period 24.11.2011 to January 2012. On the direction of honorable Civil Court, the respondent deposited an amount of Rs.170,395/- being 50% of the aforesaid first detection bill on 11.01.2013. Although the first detection bill of Rs.340,789/- was sub-judice before the Civil Court, another detection bill (second detection bill) of Rs.1,365,863/- for the period August 2011 to January 2012 charged to the respondent by FESCO @ 45.13%



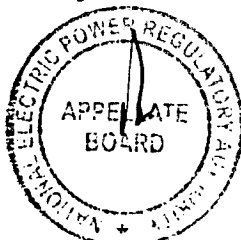


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slowness of the meter was assailed by the respondent before POI, which was cancelled by POI vide its decision dated 21.04.2014 and further directed for charging the same w.e.f January 2012 @ 45.31% slowness. Subsequently the civil suit regarding aforesaid first detection bill was dismissed as withdrawn by the honorable Civil Court vide its order 16.06.2014. However the respondent challenged the first detection bill of Rs.340,789/- for the period 24.11.2011 to January 2012 before POI on 26.06.2014, which was decided by POI vide its decision dated 20.04.2016 with the following conclusion:

“Summing up all the above observations/conclusions, this forum declares the detection bill of Rs. 340,789/- charged in 11/2012 as null, void and of no legal effect and the petitioner is not liable to pay the same. FESCO is directed to withdraw the same and overhaul the consumer’s account accordingly by adjusting all Debits, Credits, Deferred Amounts and payment made by the consumer. Disposed of in above terms.”

4. Being dissatisfied with the decision dated 20.04.2016 of POI (hereinafter referred to as the impugned decision), FESCO has filed the instant appeal. FESCO in its appeal inter alia, raised the preliminary objection regarding jurisdiction of POI and contended the petition was filed by the respondent on 26.06.2014 which was decided by POI on 20.04.2016 after statutory period of 90 days as stipulated under Section 26(6) of Electricity Act 1910, hence the impugned decision was functus officio, void ab-initio, coram non iudice and liable to be set aside. As per FESCO,





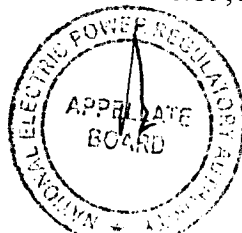
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the first detection bill of Rs.340,789/- is justified and payable by the respondent. Notice of the appeal was issued to the respondent for filing reply/parawise comments, which however were not filed.

5. Notice of the hearing was issued and the appeal was heard in Lahore on 08.05.2017 in which Mehar Shahid Mahmood advocate along with Mr. Waqar Ahmed SDO represented the appellant FESCO and no one entered appearance for the respondent. Learned counsel for FESCO reiterated the same arguments as described in memo of the appeal and pleaded for setting aside the impugned decision being unjustified.

6. We have heard arguments of FESCO and examined the record placed before us. It has been observed as under:

- i. As regards preliminary objection raised by FESCO regarding jurisdiction of POI, it is observed that the impugned decision was rendered by the POI (and not an Electric Inspector) under Section 38 of NEPRA Act 1997, hence the restriction of 90 days under Electricity Act 1910 is not applicable. Objection of FESCO is invalid, therefore rejected.
- ii. Billing meter of the respondent was checked by M&T on 23.07.2011 and 24.11.2011 and reportedly found difference between needle and display readings. Check meter was installed by FESCO on 24.11.2011. Subsequently on the recommendation of audit party, first detection bill of Rs.340,789/- (Rs.234,907/- on account of less charged units + Rs.89,075/- due to difference of needle and

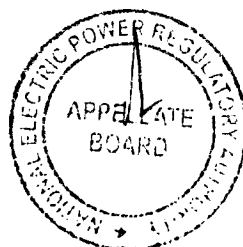




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display readings) for the period 24.11.2011 to January 2012 was charged to the respondent in November 2012. The aforesaid first detection bill was challenged by the respondent in Civil Court Faisalabad on 27.11.2012 and the civil suit was dismissed as withdrawn by the honorable Civil Court vide order dated 16.06.2014. Subsequently the respondent disputed the first detection bill of Rs.340,789/- before POI on 26.06.2014 and made 50% payment of the first detection bill.

- iii. First detection bill of Rs.340,789/- was charged for the period 24.11.2011 to January 2012 whereas the second detection bill of Rs.1,365,863/- was charged for the period August 2011 to January 2012. It is noted that the POI had already decided the dispute of aforesaid second detection bill vide its decision dated 21.04.2014. It is understood that the period of first detection bill i.e. 24.11.2011 to January 2012 is already covered in the period of second detection bill i.e. August 2011 to January 2012. Therefore there is no justification for charging the duplicate detection bill for the same period i.e. 24.11.2011 to January 2012.
- iv. As regards the stance of the respondent for charging the first detection of Rs.340,789/- on the basis of audit recommendation, it is clarified that the audit is an internal matter between DISCO and audit party and the respondent is not responsible for the same. In this regard reliance is placed on Lahore High Court Judgment dated 25.09.2007, reported in 2008 YLR 308, which is reproduced below:





National Electric Power Regulatory Authority

“WAPDA through chairman –Petitioner versus Fazal Karim respondent.

Electricity Act (IX of 1910)—

---Ss.24 &26—Demand of amount from consumer on basis of Audit report/objection without issuing show cause notice to him or joining him with proceedings to justify Audit report—Validity—Audit report would neither be binding on consumer nor could he be held responsible for fault of department.”

In view of above, the first detection bill amounting to Rs.340,789/- for 24.11.2011 to January 2012 is declared null and void as already determined in the impugned decision and the appeal is dismissed accordingly.

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Muhammad Qamar-uz-Zaman
Member

A handwritten signature in black ink, appearing to read 'Nadir Ali Khoso', is written above a horizontal line.

Nadir Ali Khoso
Convener

A handwritten signature in black ink, appearing to read 'Muhammad Shafique', is written above a horizontal line.

Muhammad Shafique
Member

Dated: 30.05.2017

